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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,445	01/20/2004	Danial William Brockman	DB-101US	9240

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EXAMINER

PETRAVICK, MEREDITH C

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/760,445	Applicant(s) BROCKMAN, DANIAL WILLIAM	
	Examiner Meredith C Petravick	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☒ Claim(s) 1-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Specification

1. The amendment filed 2/2/2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: On page 5, line 28 applicant changed “generally perpendicular” to “substantially transverse.” This amendment is new matter because the change is not merely a rephrasing. Perpendicular requires right angles while Merriam-Webster’s Collegiate Dictionary, 10th edition defines transverse as “acting, lying or being across.” Further, applicant has changed “generally” to “substantially.” “Substantially” is a relativistic terms that was not previously disclosed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

2. Claim 23 is objected to because of the following informality:

Line 2 contains a double positive recitation of the limitation “spring mounted proximal end.” This limitation first appears in amended claim 21. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 21-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 21 was amended to include the limitation, “the dislodging rods positioned substantially in a single plane substantially transverse to the field surface and generally perpendicular to the direction of movement.” Nowhere in the specification does it disclose a plurality of dislodging rods positioned in a single plane that is substantially transverse to the filed surface. The specification, as seen in Figure 1, discloses dislodging rods positioned in a single plane that is parallel to the filed surface and not transverse to the field surface.

Since this limitation is so unclear, these claims will not be further treated on the merits.

Double Patenting

NOTE: The claim 27 does not have all deletions bracketed. The preamble of claim 27 previously stated, “A method of dry harvesting cranberries from a non-flooded cranberry filed.” The words “dry” and “non-flooded” were deleted from the claim without bracketing.

5. Applicant is advised that should claim 26 be found allowable, claim 27 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Young 881,039.

Young discloses a method of harvesting cranberries including:

- moving a frame mounted dislodging rods (5) over cranberry plants at the speed of the frame

The dislodging rods have a free end and are mounted by springs (7) to the frame. The dislodging rods are oriented transverse to the direction of the movement of the frame (to the right in Fig. 1.)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of Brateng 2,544,443.

Young discloses the device described above except for the step of vacuuming up dislodged cranberries immediately and collecting them in a container.

Like Young, Brateng discloses dislodging parts of a cranberry plant off the plant. Unlike Young, Brateng teaches vacuuming up the parts and collecting them in a container (15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Young with the step of vacuuming and collecting as in Brateng, in order to increase efficiency by collecting the dislodged parts in the same pass as dislodging them.

Allowable Subject Matter

10. Claims 1-20 are allowed.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection. Applicant amended all previously rejected claims. As a result of these amendments, the claims are now rejected as above.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C Petravick whose telephone number is 571-272-6995. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Meredith C Petravick
Primary Examiner
Art Unit 3671

April 12, 2005